No. 11,514

IN THE

United States Court of Appeals

For the Ninth Circuit

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor,

and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,
Respondent.

PETITION FOR A REHEARING OF COLGATE-PALMOLIVE-PEET COMPANY.

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To the Honorable William Denman, Presiding Judge, and to the Honorable Associate Judges of the United States Court of Appeals for the Ninth Circuit:

This Honorable Court, by its decision and opinion filed in the above entitled cause on January 13, 1949, has, for the second time, affirmed the doctrine announced and applied by the National Labor Relations Board in the *Matter of Rutland Court Owners,* 44 N.L.R.B. 587, 46 N.L.R.B. 1040. The Petitioner knows, therefore, that it would be impertinent and presumptuous to argue again the question of the validity of this doctrine and to petition for a rehearing on any contention directed to this phase of the matter.

The petitioner is also aware of the fact that on this branch of the case, the decisions of this Court are in clear conflict with the decisions of the Court of Appeals, for the Seventh Circuit,[1] and, further, that the Supreme Court agreed to review the first decision of this Court on this question.[2] In addition, the Petitioner realizes that a decision by the Supreme Court on this question of law would be determinative of all other issues involved in this case. All of these factors would seem clearly to indicate that the Petitioner should not further importune this Court for the

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[1]*Aluminum Co. v. N.L.R.B.* (1946), 159 Fed.(2d) 523; *Lewis Meier & Co. v. N.L.R.B.* (1947), 21 L.R.R.M. 2093, 13 Labor Cases, 72, 249.

[2]*Local 2880 v. N.L.R.B.* (1946), 158 Fed.(2d) 365; Certiorari granted 331 U. S. 798, certiorari dismissed on motion of petitioner, 332 U.S. 845.

relief it believes is due it, but that it should take its grievance to our highest Court. However, the Petitioner is also aware of the fact that the review of its case by the Supreme Court is a matter of grace, not of right, and, further, that this Court could, without changing its position on the issue of law, clear it of the charge of bad faith which the Board has unjustly fastened upon it, and deliver it from an order which can be supported only on this unjustifiable charge. These last mentioned factors, considered in the light of what appears in the Court's opinion herein, has led the Petitioner to conclude that the filing by it of a petition for a rehearing would not be just a reargument of the issues determined by this opinion, but would, on the contrary, fulfil one of the primary purposes of all such petitions which is to call attention to material matters of law or fact inadvertently overlooked by the Court, as shown by its opinion.[3]

Accordingly, Petitioner respectfully calls attention to, and submits as reason for the granting of its petition for a rehearing the following material matters of law and of fact inadvertently overlooked by the Court:

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[3]*Millslagle v. Olson* (1942, C.C.A. 10), 128 Fed. (2d) 1015.

I.

THE LABOR MANAGEMENT ACT, 1947, AND THE ADMINISTRATIVE PROCEDURE ACT REQUIRE THAT THE FINDINGS OF THE BOARD BE SUSTAINED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE, AND THAT THE REVIEWING COURT SHALL CONSIDER THE WHOLE RECORD IN DETERMINING WHETHER THE FINDINGS OF THE BOARD ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. THE COURT DID NOT, IN THE INSTANT CASE, CONSIDER THE WHOLE RECORD.

The recital of facts contained in the opinion of the Court is notable for its brevity, and omits all the facts which render the evidence proffered by the Board in support of its findings unsubstantial. We conclude from this, that the Court has searched the record solely to determine whether there is some evidence to sustain the findings, and not for the purpose of determining whether on the *whole* record the Board's evidence remains substantial. This method of review, although it has been sanctioned sometimes in the past, does not conform to the existing law. This Court in so reviewing the record in this cause has thereby overlooked material matters of fact. Our reasons in support of this statement are hereinafter set forth.

The Court states in its opinion that "the evidence abundantly supports" the following findings of the Board:

> (a) That the CIO sought to use the closed shop contract for the purpose of punishing the insurgents; and
>
> (b) That the Petitioner acceded to discharge-demands of the CIO, notwithstanding it knew

that the Union had suspended the men in reprisal for their activities in favor of the rival Union.

The opinion thus discloses that the Court has found the findings of the Board to be supported by evidence solely because it has accepted only that part of the record cited by the Board and has entirely, although inadvertently, disregarded other convincing evidence contained therein which was cited by the Petitioner. We are of the opinion that it has always been the rule that findings of administrative agencies which are arrived at by accepting part of the evidence and totally disregarding other convincing evidence are not legally sufficient and not acceptable to the reviewing Courts.

> "It is suggested that this court should accept the findings of the Board; that contradictions, inconsistencies, and erroneous inferences are immune from criticism or attack by Section 10(e) of the Act, 49 Stat. 453, 29 U.S.C.A. paragraph 160(e), which provides that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence."
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> *National Labor Relations Board v. Union Pacific Stages* (1938, C.C.A. 9), 99 F.(2d) 153, at 177.

It may be argued that the principle announced in the above quotation has been eroded by such decisions

as *N.L.R.B. v. Waterman Steamship Corporation,* 309 U.S. 206, 84 L. Ed. 704, and *N.L.R.B. v. Bradford Dyeing Corporation,* 310 U.S. 318, 84 L. Ed. 1226, and that the latitude of reviewing Courts in so far as administrative agencies are concerned, has been limited by the rules announced in these cases. However, even if that be conceded, the Administrative Procedure Act (5 U.S.C.A., Secs. 1001-1011), which went into effect on September 11, 1946, and the Labor Management Act, 1947 (29 U.S.C.A., Secs. 141-197), which went into effect on June 23, 1947, have removed the limitations imposed upon reviewing Courts by the above mentioned cases.

Section 10(e) of the Administrative Procedure Act provides, in part, as follows:

> "(the reviewing court shall) * * * hold unlawful and set aside agency * * * findings, and conclusions found to be * * * (5) unsupported by substantial evidence * * *. In making the foregoing determinations the court shall review the *whole* record or such portions thereof as may be cited by any party, * * *." (Italics supplied.)
>
> 5 U.S.C.A., Sec. 1009 (e).

The Labor Management Act, 1947, provides in part as follows:

> "The findings of the Board with respect to questions of fact *if* supported by substantial evidence on the record considered as a *whole* shall be conclusive." (Italics supplied.)

It is most clear that these two statutes require that before the findings of an administrative agency be

accepted as conclusive, they must be sustained by the record as a whole and that the reviewing Court, in determining whether such findings are supported by substantial evidence, must consider the record as a whole and not only such parts of the record which sustain the contentions of the Board or some other administrative agency.

That this Court failed to comply with the requirements of the statute is made apparent when it is noted that the Court when it declared that the findings of the Court were abundantly supported by the evidence, failed to state or take notice of material facts which rendered less than substantial the evidence proffered by the Board. For example, on the issue of the illegality of the motivation of the CIO and of the Petitioner's knowledge thereof, the Court entirely overlooked the following material facts, among others:

1. The resignation of all the discharged employees from the CIO.

2. The participation of all the discharged employees in a strike not authorized by the CIO.

3. The undisputed right of the CIO to discipline the persons who participated in these actions.

4. The admission by nine of the discharged employees that they were discharged because of their refusal to adhere to the established policies of the CIO. (R. 70; 71-72; 202-203; 258; 274; 296; 365-367; 404-405; 420-421; 506-507; 92-93.)

No one disputes the materiality and the relevance of these facts and yet the Court, without even men-

tioning them, dismisses their effect with the sweeping statement that, "the evidence abundantly supports" the findings of the Board.

The history and express language of these two statutes demonstrate that it was the intent of their draftsmen and of Congress to put an end to the practice by reviewing Courts of disposing of administrative adjudications by just stating that substantial evidence supports the findings of the agency without setting forth material facts which must render such evidence unsubstantial. No clearer demonstration of the fact that Congress intended to change the formulae to be applied by Courts in reviewing administrative adjudications is to be found than in the following discussion of the Federal Administrative Procedure Act by Professor Dickinson:[4]

> "The revelant language is that the reviewing court, in making its determinations in the enumerated situations where it is their duty to set aside an administrative finding, 'shall review the whole record or such portions thereof as may be cited by any party.' This language is to be read especially in connection with that part of the previous sentence which lays upon the court the duty of setting aside 'agency action, findings and conclusions * * * unsupported by substantial evidence'. These two parts of the statute when read together sum up into substantially the same result as that contained in the bill of the Acheson Committee minority which required the reviewing court to consider 'findings, inferences or conclusions of fact unsupported, upon the whole record, by substan-

[4]Professor of Law, University of Pennsylvania Law School.

tial evidence.' The intention and meaning of this language was in turn explained by the quotation from Dean Stason's testimony at the Senate hearings, set forth at an earlier point in this paper. It there clearly appears that the purpose and intention of the third sentence of paragraph (e) of the judicial review section of the Administrative Procedure Act is to eliminate from judicial review of fact determinations not merely the scintilla rule but also that interpretation of the substantive evidence formula which would permit the reviewing court to examine *only one side of the evidence.* The purpose of the new provision, while not requiring the reviewing court to weigh evidence and substitute its own judgment for that of the administrative agency, is to require it at *least to look at the evidence on both sides and see whether the evidence in support of the administrative conclusion can fairly be regarded as substantial in the face of the evidence on the other side.* This purpose was made explicit in the House Committee report on the present bill, where the following language occurs:

> 'The requirement of review upon "the whole record" means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case.'

Identical language occurs in the report of the Senate Committee.

Aside from these and similar unmistakable expressions of legislative intent, it seems entirely clear that language which differs as widely as that contained in the last sentence of paragraph (e) from the hitherto accepted formulae for fact

> review would not have been used, and that there would have been no reason or excuse for using it in the statute, if it was the intention of Congress by this paragraph to make no change in existing law but merely to restate it. The existing formulae confine themselves to the requirement either that the finding of the administrative agency shall not be 'unsupported by evidence' or 'shall be supported by substantial evidence'
>
> The Administrative Procedure Act goes further. *It does not content itself with a mere restatement of the 'substantial evidence' rule; it adds a novel requirement when it says that the reviewing court in determining whether or not a finding is supported by substantial evidence 'shall review the whole record or such portions thereof as may be cited by any party'.*" (Italics supplied.)
>
> Federal Administrative Procedure Act; Proceedings of an Institute conducted by the New York University School of Law, pp. 586-589.

The Congressional history of the Labor Management Act, 1947, also clearly indicates that it was the intent of Congress to conform the judicial review sections of this statute to the corresponding sections of the Administrative Procedure Act.

> "Sections 10 (e) and 10 (f), relating to enforcement and review in the various circuit courts of appeal and in the Supreme Court, contain no changes in existing law, except with regard to the weight given to findings of the Board by the reviewing tribunal. Under the present act, the

Board's findings of fact, if supported by evidence, are deemed to be conclusive. This has been construed by the Supreme Court as meaning 'substantial evidence'. Nevertheless, there has been some dissatisfaction with what has been viewed as too great a tendency on the part of the courts not to disturb Board findings, even though they may be based on questions of mixed law and fact * * *. Although considerable sentiment was expressed in committee for a rule which requires the courts to support Board orders, unless contrary to the weight of the evidence, it was finally decided to conform the statute to the corresponding section of the Administrative Procedure Act where the substantial evidence test prevails. In order to clarify any ambiguity in that statute, however, the committee inserted the words 'questions of fact as supported by substantial evidence *on the record considered as a whole.* * * *'."[5]

Senate Report 105 on Labor Management Act, 1947, 80th Congress, pp. 26, 27.

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[5]The following colloquy between Mr. Benjamin, distinguished writer on administrative law, and Arthur E. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, and former Dean of the New York School of Law, and one of the members of the Acheson Committee which drafted the Federal Administrative Procedure Act, emphasizes the very important change wrought in the judicial review of agency action by the Federal Administrative Procedure Act:

"Mr. Benjamin: The point that I wanted to make was one of New York local pride. I think, on this question of the whole record, that the New York Court of Appeals is entitled to priority, because it brought out the whole record substantial evidence doctrine—I believe, back in 1940, in the case of Stork Restaurant against Boland, about 282 N. Y. The opinion there is quite explicit but the argument in the Court of Appeals was even more explicit and I thought it would be worth recounting very briefly, because it illustrates so well the scope of review about which Mr. Dickinson was talking.

That was an appeal by the State Labor Board to the Court of Appeals and Ralph Seward, Counsel for the Board, argued

We submit, in the light of the express language and the history of these statutes, that the Court erred, and that a hearing should be granted for the purpose of giving consideration to material facts overlooked by the Court in appraising the *substantiality of the evidence supporting the findings of the Board.*

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first. After he had been arguing 20 minutes or so, Judge Lehman said, 'Mr. Seward, you have recounted to us evidence in support of the Board's finding that appears to be substantial. I suggest that you now permit the respondent to argue, because the question for this court is whether, against the background of the respondent's evidence, your evidence remains substantial.'

That was the scope Mr. Dickinson was advocating and it is my local pride that the Court of Appeals actually handed that down as doctrine six or seven years ago.

Dean Vandervilt: I must confess as a member of the minority that I do not think any of the minority were aware of that decision. But I will say that when we were trying to draft what we called a concurring report (everyone in the law likes to find a plaintiff and a defendant so we promptly became a majority in the minority), we groped around for some phrase or group of words which would put an end to this mumbo-jumbo business of having a court say, 'we find substantial evidence', but without saying anything of what they found on the other side. After four or five days of phrase seeking, we finally hit upon that one and it is certaintly very comforting to know that we have high precedent. I have a notion that we are going to need all the controlling and persuasive argument that can be found to prevent development of the other meaning''.

Discussion, during an institute on Federal Administrative Procedure conducted by the New York University School of Law; Federal Administrative Procedure Act and the Administrative Agencies, pp. 591-592.

II.

THE COURT WAS REQUIRED TO DECIDE ALL THE RELEVANT QUESTIONS OF LAW PRESENTED, BUT DID NOT DO SO, AND IN THIS THE COURT ERRED.

The Federal Administrative Procedure Act discussed in the foregoing section of this brief provides in part as follows:

> "So far as necessary to decision and where presented the reviewing court shall decide *all relevant questions of law,* interpret constitutional and statutory provisions and *determine the meaning or applicability of the terms of any agency action.*" (Italics supplied.)
>
> 5 *USCA,* Sec. 1009 (e).

In our brief we presented for the Court's consideration many relevant questions of law, which assumed the validity of the Rutland Court Doctrine, but which cast great doubt on the validity of the Board's action in applying this doctrine to the facts of the instant case. These questions were not determined by the Court and the Court failed to pass on the validity of the Board's action, and in this the Court erred.

> "It is submitted that such a position on the part of the courts will henceforth be hard to square with the specific language of the first sentence of paragraph (e) of Section 10 of the Administrative Procedure Act, if that sentence is given the effect which an objective reading of its words seems to require. The reviewing court is there not merely given the power, but the word 'shall' is placed under an obligation, not only to 'interpret constitutional and statutory provisions' but to 'decide all relevant questions of law'; and then

follow the additional words which impose on the reviewing court itself the further duty of determining 'the meaning or applicability of the terms of any agency action'. The explicitness of this additional language just quoted, coupled with its reference to 'the meaning of the terms' of agency action, would seem henceforth to require the court in a review proceeding to look for itself at even those technical questions, whether they are regarded as law or fact, which are frequently involved in the 'terms of agency action', and which the courts in recent years have tended to treat as more or less immune from judicial consideration."

Federal Administrative Procedure Act, and the Administrative Agencies, Proceedings of an institute conducted by the New York University School of Law, pp. 584-585.

The questions of law on which the Court failed to pass are set forth hereinafter:

(a) **Whether the CIO's lawful act of suspending the employees who participated in the strike was converted by its alleged malicious or bad motives into an unlawful act?**

In our opening brief, pages 87 to 91, we argued that the CIO's lawful act of suspending and demanding the discharge of the employees who had participated in the strike was not converted into an unlawful act by its alleged malicious motivation, and that under such circumstances, the Board had no right to apply herein the Rutland Court doctrine. The Court, however, entirely overlooked this material matter of fact and law.

That this was a relevant question of law, which, in addition, involved a determination of the correctness of the Board's action is hardly open to question. In passing on this very important issue, the Trial Examiner said:

> "Assuming, for the moment, that the respondent believed that both factors prompted the C.I.O.'s request, the undersigned knows of no feasible method by which the respondent could determine which factor was the motivating one in the C.I.O.'s decision to invoke the closed shop provision of the contract." (R. 59.)

And in the footnote appended to the foregoing quotation he says:

> "Or is the presence of an illegitimate motive alongside a legitimate one, sufficient, as the Board has frequently ruled where discharges absent a closed shop are concerned, to render a discharge violative of the Act? The undersigned does not believe that it is." (R. 59.)

Commenting further on this point the Trial Examiner says:

> "That the contracting Union might properly discipline members for participating in a strike called in violation of union policy, by suspending or expelling them, seems to the undersigned hardly open to question. A labor organization, no less than any other organization, cannot be denied the authority to compel compliance with the decisions of its membership. 'Good standing' in an organization implies something more than the mere payment of dues." (R. 63.)

The Court, like the Board, has entirely ignored and has failed to decide this very relevant question of law and fact involving the CIO's right to discipline and cause the discharge of employees who participated in an illegal strike, notwithstanding its alleged malicious motivation, and in this the Court has failed to comply with the requirements of the Administrative Procedure Act.

(b) **Whether the Board's findings that petitioner had "knowledge" of its employees' anti-CIO activity when it discharged the first two groups of employees, are based on invalid and prohibited inferences and should be disregarded?**

On pages 93 to 104, inclusive, of our brief, we argued that the Board's findings on the question of Petitioner's knowledge were invalid, and in addition, that, on the authority of *Galloway v. United States,* 319 U. S. 373, 87 L. Ed. 1458, the Board was not permitted to rely on inferences when direct evidence as to the fact involved was available. The Board failed to make any answer to this argument, and the Court ignored and failed to decide this important and relevant question of law.

(c) **Whether the finding of the Board that the Petitioner made no bona fide effort to evaluate the evidence before it, is invalid because it is based on the equally invalid presumption that the petitioner knew of the Board's view of the law?**

The Board found it necessary to culminate its arbitrary action in this proceeding by charging that the Petitioner had made "no bona fide effort to evaluate all the evidence before it". (R. 79.) The Petitioner,

although it is a corporation, is not insensitive to the charge of bad faith which the Board has gratuitously fastened upon it.

In our brief, pages 113 to 118, inclusive, we argued that as a matter of law this finding was invalid because it was based on the equally invalid presumption that the Petitioner knew at the time of the events in question that the Board would cast upon it, after the fact, a duty to evaluate the evidence. Up to that time the announced rule of the Board had been, as stated by the Trial Examiner, that:

> "In each such instance, however, the Board has required knowledge by the employer, derived from information in its possession at the time it effectuated the discharge. This information has heretofore been of such a nature as not to require any interpretation of evidence, or any independent investigation on its part." (R. 63-64.)
> 64.)

In a footnote appended to the above quotation the Trial Examiner says:

> "In the Rutland court case, for example, the business agent of the A.F. of L., the contracting union, called the employees into the office of the employer where both the employer and the union agent pressed them to state to which labor organization they gave allegiance. When they answered that they preferred the CIO, the agent stated to the employer that the employees had 'double-crossed' him and forthwith replaced them by others. No reason other than their interest in the CIO was alleged.

> In *Portland Lumber Mills,* the dischargee showed the employer the formal charge against him which stated that he had given 'aid and support to a dual organization'." (R. 64.)

From the foregoing it may be concluded that up to the time that this case was adjudicated the Petitioner was under no duty to interpret or evaluate evidence, and, therefore, committed no actionable wrong in failing to comply with this duty, and the Board does not make any contention to the contrary. The Board does maintain, however, that the Petitioner has done something of which it disapproves and that for this reason the Petitioner must be punished.

This approach to the problem is, of course, law-making in the guise of adjudication and not unlike the type of law making described by Bentham in *"Truth v. Ashhurst; Or the Law as it is, contrasted with what it is said to be."* There, Bentham, speaking of certain common law judges, says:

> "It is the judges (as we have seen) that make the common law. Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait til he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way the judges make laws for you and me. They won't tell a man beforehand what it is he *should not do*—they won't so much as allow of his being told: they lie by until he has done something which they say he should not *have done,* and then they hang him for it. What way, then, has any man of com-

> ing at this dog-law? Only by watching their proceedings: by observing in what cases they have hanged a man, and what cases they have sent him to jail, in what cases they have seized his goods, and so forth."
>
> *Works of Jeremy Bentham,* Volume 5, p. 235.

We hardly need say that this type of law making in the guise of adjudication by administrative agencies who are neither responsible nor responsive to the public will, is despotic and abominable. Unless such agency action is set aside by the reviewing Courts we will have come to the position where there are "no such things as rules or principles: there are only isolated dooms."[6]

In oral argument counsel for the Board in response to a question by Judge Bone, said in substance, on the question of employer knowledge, that in certain instances the Board required independent investigation by the employer of the Union motivation,—that in others it did not,—*that the problem was approached on a case to case basis.* This makes it clear that the Board's definition of the law excludes rules or principles of general application or the equal and equitable application thereof. We can say of this error, as does Mr. Justice Cardozo, that:

> "A definition of law which in effect denies the possibility of law since it denies the possibility of rules of general operation, must contain within itself the seeds of fallacy and error."[7]

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[6]Cardozo, The Nature of the Judicial Process, p. 126.
[7]Cardozo, op. cit. pp. 126, 127.

That there is a purpose in the Board's adoption of, and application of this erroneous and fallacious definition of law is unquestionable. The Board may thereby, as in the instant case, adjudicate as it pleases, without regard to rule or principle. It may in the face of overwhelming direct evidence rely on invalid and prohibited inferences and presumptions to stigmatize litigants and deprive them of their property. The instant case furnishes a perfect example of the Board's method: The direct evidence in the record overwhelmingly pointed to lack of knowledge of the union's true motivation. The record, therefore, required an affirmance of the Trial Examiner's findings, but the Board had determined to rule against the Petitioner. Accordingly, it invented solely for the purposes of this case, a "presumption of knowledge" and a "presumption of bad faith" to overcome the record and the presumption of good faith and fair dealing.

The conclusions we have reached with reference to the Board's approach to this problem is not just the reaction of a disappointed litigant. In proof of this we submit for consideration the view which the editors of the Labor Relations Reporter took of the Board's treatment of this problem and of its action herein:

> "Notwithstanding more than a decade of administrative and judicial interpretation of the Wagner Act, and notwithstanding its major importance to both employers and unions, no reasonably certain answer, capable of advance application to different factual situations, can yet be found in the decisions to settle this question:

'When does a closed shop or membership-maintenance contract protect an employer against reinstatement and back-pay orders if he complies with the contracting union's demand for the discharge of an employee because of suspension or expulsion from the union?'

Even the Board's earlier decisions, before the controversy assumed its current importance, *revealed only shifting and differing answers from year to year.* Some cases would hold that the contract insulated the employer from discriminatory discharge complaints; others just as positively ruled that they did not. (Analysis, Oct. 29, 1945) * * *

It is the 'knowledge test' which the present decision expands. In effect, the present decision *creates a presumption of knowledge* where it is found that the employer had information indicating that the motive of the contracting union *might* have been reprisal against 'dual-unionists' at a time when the Board considered the closed-shop contract 'open' for a new determination of representatives, and 'made no bona fide effort to evaluate all the evidence before it.'

The Board may, however, reach contrary results in applying the 'knowledge' test, even when some factors tend to indicate at least constructive knowledge. Thus in a recent case it was indicated that some of the supervisory employees were probably aware of the motivation of the contracting union, but the Board, by a vote of two-to-one, held that the facts were not such 'as to warrant a finding that the knowledge it possessed placed this employer under duty to inquire further as to the motivating factors in the expulsion by the

union of these employees.' (Spicer Mfg. Corp., 18 LRRM 1326.)" (Italics supplied.)

Analysis, Sept. 23, 1946, 18 Labor Relations Reporter 85, pp. 86-87.

We submit that the matter hereinabove discussed presents a relevant question of law which the Court should decide on rehearing contrary to the Board's contentions, otherwise we shall have truly reached the position where there "are no such things as rules or principles: there are only isolated dooms" .

Dated, San Francisco, California,
February 2, 1949.

Respectfully submitted,
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CERTIFICATE OF COUNSEL.

I certify that in my judgment the within petition for a rehearing is well founded and that it is not interposed for delay.

Dated, San Francisco, California,
February 2, 1949.

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Of Counsel for Petitioner,
Colgate-Palmolive-Peet Company.